

Decision 01-09-003 September 3, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U 60 W), a Corporation, for an Order Authorizing It to Increase Rates Charged for Water Service in the Bakersfield District.

Application 00-09-010
(Filed September 11, 2000;
amended January 5, 2001)

Gregory Bowling, Attorney at Law, and Francis S. Ferraro, for California Water Service Company, applicant.

Peter Fairchild, Attorney at Law, for Water Branch of the Commission's Office of Ratepayer Advocates; Mark Fogleman, Attorney at Law, and John Cicerone for Califarming, Inc.; and Brian J. Todd for Building Industry Association of Kern County, interested parties.

O P I N I O N

I. Summary

By this decision, the Commission approves a stipulation between California Water Service Company (Applicant), the Water Branch of the Commission's Office of Ratepayer Advocates (ORA), and Califarming, Inc. (Califarming). The stipulation sets the special facilities fee for the Bakersfield District, and provides for a reduced fee for Califarming.

II. Background

On September 11, 2000, Applicant filed Application (A.) 00-09-010 for a general rate increase for water service in its Bakersfield District. On January 5, 2001, Applicant filed an amendment to A.00-09-010. In the amendment, Applicant requests a deviation in its special facilities fee for the Bakersfield district. Specifically, Applicant seeks authority to allow Califarming, Inc. a \$300 per equivalent one inch service credit in consideration of its efforts in achieving lower purchased water costs.

By Resolution ALJ 176-3047, dated September 21, 2000, the Commission preliminarily determined this to be a ratesetting proceeding expected to go to hearing. A prehearing conference was held on January 5, 2001, at which only Applicant and ORA appeared. Assigned Commissioner Henry M. Duque's January 11, 2001 scoping ruling confirmed the category and need for hearing, defined the issues, established a schedule, designated Administrative Law Judge (ALJ) Jeffrey P. O'Donnell as the principal hearing officer, and consolidated this application with applications for three other districts. Today's decision, however, addresses only the above-captioned application.

Commissioner Duque and the ALJ conducted a public participation hearing on January 25, 2001, in Bakersfield. Evidentiary hearings were held on February 5 and 9, 2001. On March 7, 2001, the Applicant and ORA filed a motion for approval of a stipulation. That stipulation was not opposed. Additional evidentiary hearings on the stipulation were held on March 5 and 29, 2001. That stipulation, addressed in D.01-08-039, does not address the special facilities fee for the Bakersfield District or the amendment. D.01-08-039 closed the other applications.

On April 27, 2001, Applicant, ORA and Califarming (Proponents) filed a motion for adoption of a second stipulation (Stipulation) addressing the special facilities fee. On May 10, 2001, the Building Industry Association of Kern County (BIAK) filed comments in opposition to the Stipulation.¹

III. The Stipulation

The Stipulation is attached to this decision.

The special facilities fee applies to new development, and is intended to pay the costs of facilities necessary to supply new development. The Stipulation increases the fee from \$450 to \$1,350 (from \$225 to \$675 per dwelling unit for multifamily dwellings) for each equivalent one-inch water service. The Stipulation also requires Applicant to track the fees collected and use them to offset the cost of the Northeast Bakersfield Water Treatment Plant. The plant was addressed in the interim decision.

Califarming owns land in Northeast Bakersfield that it plans to develop. The Stipulation provides Califarming a credit toward the special facilities fee of \$300 per equivalent one-inch water service. For multifamily developments, Califarming will receive a credit of \$150 per equivalent one-inch water service. The credits apply to the first 2,500 services that Califarming develops in Northeast Bakersfield. Applicant and Califarming agree to use their best efforts to ensure that Applicant's contract with Bakersfield for the purchase of untreated water remains in effect and is renewed, and is broadened to provide water to other portions of Applicant's Bakersfield District.

¹ BIAK did not request hearings regarding the Stipulation.

Proponents say that the special facilities fee is cost-based. Historically, the fee was based on each development's specific requirements. In Decision (D.) 99-05-018, the Commission adopted special facilities fees based on equivalent one-inch water service. The adopted amount was calculated as 75% of the cost of a new well without water treatment. The increase in the fee is due to the inclusion of 75% of the cost of water treatment.

Regarding the proposed credit for Califarming, Proponents represent that Califarming was instrumental in Applicant's obtaining a contract with Bakersfield to obtain untreated water to serve Califarming's property. The contract price for the water is substantially below the price Applicant would otherwise have to pay. Proponents state that the proposed credit is offset by the cost savings for the water purchased under the contract. In addition, the infrastructure that Califarming will install to serve its development will improve the reliability of Applicant's system, enable other developers to connect to Applicant's facilities, and improve fire protection.

IV. BIAK's Comments on the Stipulation

BIAK opposes the special facilities fee increase proposed in the Stipulation.² BIAK states that Applicant claims it instituted the fee increase at the request of real estate developers. BIAK says that, since Applicant has failed to identify any developer or builder that made such a request, the claim is false. BIAK further claims that Applicant has not provided information to BIAK that justifies the increase in the fee. Finally, BIAK says that the increase in the fee will

² BIAK did not otherwise address the amendment.

directly increase the price for new homes. As a result, BIAK says some families will be unable to buy their own homes.

Proponents state that BIAK fails to raise any material issue of fact. According to Proponents, Applicant provided substantial information to BIAK in meetings with BIAK in March 2001. At these meetings, BIAK allegedly declined Applicant's offer to provide additional written information. In addition, Proponents provided BIAK with copies of Applicant and ORA's reports as well as the Stipulation, and the prior stipulation. Finally, Proponents justify the special facilities fee increase as necessary to insulate existing customers from paying the costs attributable to new development.

V. Discussion

BIAK raises three issues. The first is the allegation that Applicant falsely claimed that the increase was requested by real estate developers. BIAK did not specify where in the record this claim was made, and we have not found any. More important, we must determine the reasonableness of the special facilities fee. Whether the increase was or was not requested by real estate developers is not material to that determination.

BIAK's second allegation is that Applicant did not provide it with sufficient information to understand or consent to how the fee was derived. The fact that the information provided to BIAK did not win its support is also not material. We are satisfied that the record provides sufficient information for us to determine the reasonableness of the special facilities fee.

BIAK's third allegation is that the proposed fee increase will cause an increase in the price of new homes that will in turn result in some families not being able to purchase one. Proponents do not dispute that it will increase the cost of new construction. The purpose of the fee is to pay the costs of serving

new development. The proposed fee increase will increase the cost of new construction, and therefore, the price of a new home. If the costs to serve new construction are not recovered through the special facilities fee, they will have to be recovered through increased rates. This would result in subsidization by current ratepayers of new home construction. We find no reason why such a subsidy is warranted, and Commission policy does not favor such a subsidy.

BIAK has not alleged any fact that would, if proven, indicate that the fee increase is unreasonable. In addition, it has not raised any issue of law or public policy to justify the rejection of the increase. BIAK has not requested additional hearings, and none are needed. It remains to consider whether the Stipulation should be approved.

Under Rule 51.1(e) of the Commission's Rules of Practice and Procedure, the Commission will not approve settlements or stipulations, whether contested or uncontested, unless they are reasonable in light of the whole record, consistent with law, and in the public interest. As we discuss below, the Stipulation meets these criteria.

The special facilities fee included in the stipulation is the same as the initial recommendations of both Applicant and ORA. The increased fee is to help recover the cost of providing service, including water treatment, to new development. The data submitted by Applicant substantiates that the fee is cost-based. The fee insulates other ratepayers from paying costs caused by new development. Therefore, the fee included in the Stipulation is reasonable.

Califarming was instrumental in Applicant's obtaining a contract from Bakersfield for untreated water to serve Califarming's property at a lower cost than would otherwise be the case. Proponents estimate savings in excess of the

proposed credit. In addition, the proposed credit is unopposed. Therefore, the proposed credit is reasonable.

Regarding the lawfulness of the Stipulation, Proponents represent that the Stipulation does not contravene any statutory provision or any Commission decision. BIAK does not claim that it does. We conclude the Stipulation is lawful.

As discussed above, the proposed fee follows our policy that current ratepayers not subsidize new construction. In addition, the record contains an explanation of Proponents' positions. The Stipulation fully defines the fee and the credit Proponents have agreed to, and how they are to be implemented. As a result, the record is sufficient for the Commission to determine what the issues are, and how the Stipulation resolves them. The Stipulation conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests. Therefore, the Stipulation is in the public interest.

The Stipulation, when reviewed as a total product, is reasonable in light of the whole record, consistent with law and in the public interest. Therefore, we will approve it.

VI. Comments on Proposed Decision

On August 7, 2001, a principal hearing officer's proposed decision was filed with the Commission and served on the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the Commission's Rules of Practice and Procedure. No comments were filed on the proposed decision.

Findings of Fact

1. Proponents have entered into a Stipulation that resolves every issue between them regarding the special facilities fee.
2. Whether Applicant's proposed increase in the fee was requested by real estate developers is not material.
3. The fact that the information concerning the fee provided to BIAK did not win its support is not material.
4. The purpose of the fee is to pay the costs of serving new development.
5. The proposed fee increase will slightly increase the cost of new construction, and therefore, the price of a new home.
6. Denial of the fee increase would result in ratepayer subsidization of new home construction.
7. BIAK has not alleged any fact that would, if proven, indicate that the fee increase is unreasonable.
8. BIAK has not raised any issue of law or public policy that would justify rejection of the proposed fee increase.
9. The fee included in the stipulation is the same as the initial recommendations of both Applicant and ORA.
10. The increased fee is intended to recover the cost of providing service to new development, including water treatment. Data submitted by Applicant substantiates that the fee is cost-based.
11. The fee insulates current ratepayers from paying costs caused by new development.
12. Califarming was instrumental in Applicant's obtaining a contract for untreated water to serve Califarming's property at a lower cost than would otherwise be the case.

13. Estimated savings due to the contract are in excess of the proposed credit.

14. The proposed credit is unopposed.

15. No term of the Stipulation contravenes statutory provisions or prior Commission decisions.

16. The Stipulation conveys sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

Conclusions of Law

1. No additional hearings are needed regarding the issues raised in BIAK's comments on the Stipulation.

2. The Stipulation is reasonable in light of the whole record, consistent with law, and in the public interest.

3. The Stipulation should be adopted.

4. This decision should be made effective immediately to enable Applicant to implement the Stipulation without delay.

O R D E R

IT IS ORDERED that:

1. The motion for adoption of the stipulation (Stipulation) between California Water Service Company, the Water Branch of the Commission's Office of Ratepayer Advocates, and Califarming, Inc. is granted.

2. Except as specifically provided for in the Stipulation, or granted in Decision 01-08-039, the application is denied.

3. Application 00-09-010 is closed.

This order is effective today.

Dated September 6, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

ATTACHMENT

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U 60 C),), a Corporation, for an Order Authorizing It to Increase Rates Charged for Water Service in The Palos Verdes District and Establishing The “Base Year 2000” Revenue Requirements.

Application 00-09-009

And Related Matters.

Application 00-09-010

Application 00-09-011

Application 00-09-012

STIPULATION

1.00 GENERAL

1.01 The parties to this Stipulation before the California Public Utilities Commission (“Commission”) are California Water Service Company (“CWS”), the Water Branch of the Office of Ratepayer Advocates (“ORA”), and Califarming, Inc. (“Califarming”) – collectively, “the Parties.” The Parties, desiring to avoid the expense, inconvenience, and uncertainty attendant to litigation of the matters in dispute between them have agreed on this Stipulation which they now submit for approval.

1.02 In addition, since this Stipulation represents a compromise by them, the Parties have entered into each stipulation on the basis that its approval by the Commission not be construed as an admission or concession by any Party regarding any fact or matter or law in dispute in this proceeding. Furthermore, the Parties intend that the approval of this Stipulation by the Commission not be construed as a precedent or statement of policy of any kind except as it relates to the current and future proceedings addressed in the Stipulation.

1.03 The Parties agree that no signatory to this Stipulation nor any member of ORA assumes any personal liability as a result of their agreement. The Parties agree that no legal action may be brought by any Party in any state or federal court, or any other forum, against any individual signatory representing the interests of ORA, attorneys

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representing ORA, or the ORA itself related to this Stipulation. All rights and remedies of the Parties are limited to those available before the Commission.

1.04 No Party to this Stipulation will provide, either privately or publicly, before this Commission any rationale or strategy for support of any compromise reached herein beyond that stated herein unless otherwise agreed to by the Parties.

1.05 All issues among the Parties have been resolved.

2.00 SPECIAL FACILITIES FEE

2.01 As discussed in Application (A.) 00-09-010 and ORA's Report on the Results of Operations for the Bakersfield District, CWS charges a Special Facilities Fee in its Rule 15 (Main Extensions). This fee, which only applies to new development, was adopted in D.99-05-018 and became effective on October 19, 1999, by Advice Letter 1475. Under Rule 15, a developer is charged a Special Facilities Fee to pay the cost of facilities needed to increase supply to serve its development. These fees are intended to insulate existing customers from paying costs attributable to new customers.

2.02 Historically, Special Facilities Fees have been based on each development's specific requirements. In response to concerns over the inequities of these fees among developers, CWS requested and the Commission adopted (Decision (D.) 99-05-018) Special Facilities Fees based on equivalent 1-inch services. CWS's methodology for determining the fees adopted in D.99-05-018 uses 75% of the cost of a new well without treatment. For the Bakersfield District, this resulted in a fee of \$450 (\$225 for multifamily developments) for each equivalent 1-inch service.

2.03 In A.00-09-010 CWS proposes a revised Special Facilities Fee for the Bakersfield District which includes the cost of treatment for arsenic. Including 75% of the cost of treatment increases the Special Facilities Fee by \$900 (\$450 for multifamily developments) per equivalent 1-inch service. Additionally, CWS analyzed the costs associated with the proposed Northeast Bakersfield Treatment Plant ("Treatment Plant"). It found that the revised fee is comparable to the costs of the Treatment Plant. Accordingly, the Parties stipulate that CWS's Special Facilities Fees be increased from \$450 to \$1,350 (and from \$225 to \$675 for multifamily developments) per equivalent 1-inch service and become effective five days after the effective date of the decision adopting this Stipulation. Finally, the Parties agree that CWS should track the amounts collected due to the increase in Special Facilities Fees and offset the cost of the Treatment Plant requested in the advice letters discussed in Section 7.05 of the

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Stipulation between ORA and CWS, Exhibit J-1, dated March 27, 2001, by the additional amount collected.

3.00 AMENDMENT TO APPLICATION 00-09-010

On January 5, 2001, CWS filed an amendment to A.00-09-010 requesting a deviation from its Rule 15, Section C.1.e, that would allow Califarming a credit of \$300 towards the current Special Facilities Fee of \$450 and proposed \$1,350 per equivalent 1-inch service. The Amendment was filed in response to a letter dated December 1, 2000, from Fred Curry of the Commission's Water Division. That letter rejected CWS's Advice Letter 1485, which contained the same request to deviate from Rule 15 as the Amendment, and stated:

"It is not appropriate to request such deviation by advice letter. Therefore, CWS may request the authority to deviate from Rule 15 by amending the current GRC application (A. 00-09-010) for the Bakersfield District."

4.00 BENEFITS FROM CALIFARMING

4.01 As set forth in Appendix A to the Amendment, Califarming has contributed greatly to the designation of Northeast Bakersfield as a preferred area for new residential development in the City of Bakersfield. Additionally, Califarming was instrumental in CWS's obtaining a contract for untreated water to serve Califarming's property in Sections 17 and 20 in Northeast Bakersfield at a rate substantially below the rate in CWS's Master Contract for untreated water to serve the City of Bakersfield (City).

4.02 Untreated water will cost CWS \$55 per acre-foot (AF) under the Master Contract, compared to \$32/AF under the contract to serve Sections 17 and 20. Based on this difference (\$23/AF) Califarming's Prepared Testimony submitted March 15, 2001, shows a benefit, based on net present value, ranging from \$287 to \$637 per service. Moreover, the infrastructure that Califarming will install to serve its development will improve the reliability of CWS's Water System, enable other developers to connect to CWS's facilities, and improve fire protection. Finally, Califarming and CWS provided ORA with an analysis that shows the effect Califarming's development will have on CWS's Bakersfield customers. This analysis compares CWS's rates with and without Califarming's development. As a result of Califarming's development, CWS estimates that its rates would be lower by \$0.08 per customer in 2003, \$0.45 per customer in 2008, and \$0.35 per customer in 2012.

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5.00 AGREEMENT ON DEVIATION OF RULE 15

5.01 Based on the significant benefits that Califarming's development will bring to CWS's customers, the Parties agree that the Commission should approve a deviation from CWS's Rule 15 Special Facilities Fee as follows:

- 1) Califarming should receive a credit of \$300 on the Special Facilities Fee in CWS's Rule 15, Section C.1.e, for each equivalent 1-inch service. Multifamily developments should receive \$150 (one-half credit) for each equivalent 1-inch service.
- 2) Califarming should receive a credit for each service it develops in Northeast Bakersfield to a total of 2,500 services. Since they receive a credit of only one-half, multifamily services should be given a weighting of 50 percent. In addition, each multifamily service should be counted as one-half a service toward the total of 2,500 services.
- 3) CWS and Califarming agree to use their best efforts to ensure that the contract with the City to serve Califarming's development in Northeast Bakersfield is renewed and remains in effect. If the contract terminates for any reason beyond the control of CWS, Califarming's future credits should cease. If this occurs, however, no adjustment should be made to amounts already credited. The renewal or extension of the contract at a rate different than the current rate of \$32/AF should not be considered a termination of the contract.
- 4) Currently, CWS's contract with the City for 2,500 AF per year to serve Califarming's development in Northeast Bakersfield restricts its use to Sections 17 and 20. CWS and Califarming agree to use their best efforts to modify the contract so that this restriction no longer applies once the Treatment Plant becomes operational and Sections 17 and 20 are included in CWS's service area. Modifying the restriction will significantly reduce CWS's cost of untreated water and will engender a significant net benefit to CWS's ratepayers.

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5.02 Accordingly, the Parties request that the Commission authorize CWS to deviate from its Rule 15, Section C.1.e, by providing Califarming a credit on the Special Facilities Fee in the Bakersfield District of \$300 (\$150 for multifamily developments) per equivalent 1-inch service for 2,500 equivalent 1-inch services, as herein provided.

6.00 RESPONSE TO QUESTIONS FROM JUDGE O'DONNELL

At the hearing held on March 29, 2001, in San Francisco Administrative Law Judge O'Donnell requested the Parties to respond to several questions. Each question and the response by the Parties are shown below.

- 1) What is the average residential use in acre-feet?

Residential ratepayers in the Bakersfield District use approximately 1 AF per year.

- 2) How many years are required for the \$23/AF savings to pay off the \$300 credit?

Assuming each connection uses one AF per year, the credit would be paid off in approximately 13 years.

- 3) What is the life of the contract?

The initial term of the contract (included in Appendix A to the Amendment) is nine years from the date the Commission approves inclusion of Califarming's development in CWS's service area. A request for such approval has not yet been filed. Additionally, a request will be made to renew the term for successive periods of three years.

- 4) What is the dollar value of the other benefits identified in the exhibits?

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\$6.6 million in potential savings are related to storage and fireflow, \$718,000 are related to the saved expense of purchased water, and \$840,000 are related to additional annual revenue from rates. See Califarming Prepared Testimony (Mar. 15, 2001). Moreover, as indicated in Section 4.02, CWS estimates significant additional annual savings due to Califarming's contribution to the cost of the water Treatment Plant.

- 5) Would CWS be obligated to provide service to Califarming without the contract?

CWS has provided a letter to Califarming indicating that it will, independent of the contract, serve Califarming's development.

7.00 VERIFICATION

The signatories to this Stipulation personally and independently verify that each element of it is correct.

WATER BRANCH OF THE OFFICE OF RATEPAYER ADVOCATES

By: /s/ Donald McCrea
Donald McCrea
Project Manager

California Public Utilities Commission
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(415) 703-3087

Dated: April 25, 2001

CALIFORNIA WATER SERVICE COMPANY

By: /s/ Francis S. Ferraro
Francis S. Ferraro
Vice President

California Water Service Company
1720 N. First Street
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Dated: April 25, 2001

ATTACHMENT

CALIFARMING, INC.

By: /s/ John Cicerone
John Cicerone

11200 Lake Ming Avenue
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Bakersfield, CA
(661) 872-9790

Dated: April 25, 2001

(END OF ATTACHMENT)